PATENT COOPERATION TREATY

PCT

TRANSLATION INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 10351			FOR FURTHER AC	TION	See Form PCT/IPEA/416			
International application No. PCT/JP2004/019330			International filing date 24.12.2004		Priority date (day/month/year) 25.12.2003			
Internati	onal Patent Cla	ssification (IPC) or nat	ional classification and IP	C				
A61K35/20, A61K35/74, A61P17/16, A23C21/02, A23L1/30								
Applicant CALPIS CO., LTD.								
1.	 This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 							
2.	This REPORT	consists of a total of	5	sheets, includ	ling this cover sheet.			
3.	This report is	also accompanied by A	ANNEXES, comprising:					
	a. (se	ent to the applicant and	l to the International Bure	au) a total of	sheets, as follows:			
	sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).							
	sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.							
	b. (se		Bureau only) a total of (in	ndicate type and num	ber of electronic carrier(s))			
					, containing a sequence listing and/or tables			
	related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).							
4.	This report co	ntains indications relat	ing to the following items	:				
	Box N	Vo. I Basis of the	e report					
	Box N	To. II Priority						
	Box N	Vo. III Non-establ	ishment of opinion with re	egard to novelty, inve	entive step and industrial applicability			
	Box N	lo. IV Lack of uni	ity of invention					
	Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement							
Box No. VI Certain documents cited			cuments cited					
	Box No. VII Certain defects in the international application							
	Box No. VIII Certain observations on the international application							
Date of submission of the demand				ate of completion of	this report			
Name and mailing address of the IPEA/JP				uthorized officer				
Facsimile No.				elephone No				

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Box	No. I	I Basis of the report							
1.		h regard to the language, this report is based on the internationated under this item.	onal application in the language in	which it was filed, unless otherwise					
2.		This report is based on translations from the original language into the following which is the language of a translation furnished for the purposes of: international search (Rule 12.3 and 23.1(b)) publication of the international application (Rule 12.4) international preliminary examination (Rule 55.2 and/or 55.3) With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to							
	this :	the international application as originally filed/furnished the description: pages 1-10 as originally filed/furnished							
		pages*							
		pages*	_	_					
	\boxtimes	the claims:	- ,						
		nos. 1–5		as originally filed/furnished					
		nos.*							
		nos.* 6-8							
		nos.*							
	П	the drawings:	- , ,						
		sheets		as originally filed/furnished					
		sheets*							
		sheets*	-						
	\Box	a sequence listing and/or any related table(s) – see Supplem		_					
	\exists		ichtal Box Relating to Sequence L	asung.					
3.	ш	The amendments have resulted in the cancellation of:							
			the description, pages						
			the claims, nos.						
			the drawings, sheets/figs						
4			1 4 14 11 4 1						
4.	Ш	This report has been established as if (some of) the amend they have been considered to go beyond the disclosure as fi							
		the description, pages							
		the claims, nos.							
		the drawings, sheets/figs							
		the sequence listing (specify):							
		any table(s) related to sequence listing (specify):							
*	If ite	em 4 applies, some or all of those sheets may be marked "sup	erseded."						

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Box No. II	II Non-establishment of opinion	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability						
The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:								
Ш	the entire international application							
	claims Nos. <u>5–8</u>							
becaus	-							
	the said international application, or the relate to the following subject matter w	ion (<i>specify</i>):						
	The subject r	matter of claim 5 relates t	o methods					
	for treatment of t	the human or animal body by	therapy.					
	Thus, this International Preliminary Examining							
	Authority is not	required to carry out inter	rnational					
	preliminary examin	nation on this subject matt	er under					
	the provisions of PCT Rule 67.1(iv).							
	are so unclear that no meaningful opinion	on could be formed (<i>specify</i>):						
	the claims, or said claims Nos.	ninian could be formed	are so inadequately supported					
\square	by the description that no meaningful opinion could be formed.							
	no international search report has been the nucleotide and/or amino acid seque		in Annex C of the Administrative					
Ш	the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the A Instructions in that:							
	the written form	has not been furnished						
	the computer readable form	does not comply with the standard has not been furnished does not comply with the standard						
	the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.							
	See Supplemental Box for further detail	ls.						

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2. Citations and explanations (Rule 70.7)

Documents cited in the international search report:

Document 1: JP 11-98978 A (Calpis Co., Ltd.), 13 April 1999

Document 2: JP 10-45610 A (Calpis Co., Ltd.), 17 February 1998

Document 3: WO 2000/41572 A1 (Calpis Co., Ltd.), 20 July 2000

Document 4: JP 10-95736 A (Calpis Co., Ltd.), 14 April 1998

Document 5: JP 2000-239175 A (Calpis Co., Ltd.), 5 September 2000

Document 6: JP 2003-81868 A (Ichimaru Pharcos Inc.), 19
March 2003

Document 7: JP 2003-135026 A (Sunstar, Inc.), 13 May 2003

Document 8: JP 2001-163799 A (Miyagi Chem. Ind.), 19 June 2001

Explanation

The invention set forth in claims 3 and 4 lacks novelty in the light of documents 1 to 5 cited in the international search report.

Documents 1 to 5 set forth fermented milk whey obtained by fermenting milk using Lactobacillus

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

helveticus, and indicate that said fermented milk whey can be used in functional foods, dietary supplements and the like.

Documents 1 to 5 do not indicate that said food has a moisture-retaining activity, but said food is a functional food, and as such there is no discernible difference from the invention of this application as a food.